

## WSGR ALERT

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### JURY CONVICTS FREDERIC BOURKE OF CONSPIRACY TO VIOLATE FOREIGN CORRUPT PRACTICES ACT

#### Knowledge of Business Partner's Corrupt Payments to Government Officials Results in a Guilty Verdict

On July 10, 2009, a jury in the United States District Court for the Southern District of New York convicted Frederic Bourke for conspiring to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) and the Travel Act, and for lying to FBI agents. Bourke, better known as the co-founder of luxury handbag maker Dooney & Bourke, faces a possible 10-year prison sentence for his involvement in a failed scheme to gain control of the State Oil Company of the Azerbaijan Republic (SOCAR). Bourke's conviction marks a significant victory for the government and demonstrates the broad sway of the FCPA. Most significantly, Bourke did not himself make any bribes to a foreign government official, but was instead convicted based on a co-investor's corrupt payments to Azeri government officials. Moreover, the government successfully argued that even if Bourke did not know about his business partner's bribes, his willful blindness to the payments was sufficient to establish his criminal culpability.

Pursuant to the anti-bribery provisions of the FCPA, it is unlawful for any issuer, domestic concern, or person acting in the United States to offer anything of value to any members of a foreign government, international organization, or political party for the purpose of: (1) influencing improperly the performance of their official duties; (2) inducing them to use their influence to affect a foreign government's or agency's decision; (3) obtaining or retaining business for anyone; or (4) directing business to anyone. Bourke

was convicted of conspiring to violate the FCPA, a charge that requires the government to show, in essence, that Bourke agreed with others to commit violations of the FCPA.

#### Background

In the mid-1990s, Viktor Kozeny, a Czech national and the so-called "Pirate of Prague," devised a scheme to acquire SOCAR. Using two investment vehicles, Minaret Ltd. and Oily Rock Ltd., Kozeny purchased a controlling block of vouchers distributed under the Azeri government's official privatization program. Each voucher represented an option to purchase a share of SOCAR upon a possible future privatization.

In early 1998, Kozeny began soliciting investments in Oily Rock. Kozeny's campaign yielded over \$180 million in investments by individuals including Bourke and former Democratic Senate majority leader George Mitchell, as well as corporate entities, including Omega Advisors, Inc. For his part, Bourke invested \$8 million through his investment company, Blueport International, Ltd., in Kozeny's venture.

Kozeny has admitted that, beginning in 1997, he used Minaret and Oily Rock to distribute over \$300 million in bribes and gifts to senior Azeri officials in order to ensure that the Azeri government would proceed with SOCAR's privatization and redeem the purchase-option vouchers. In the end, the bribery proved fruitless when the Azeri

government decided not to privatize SOCAR. Kozeny currently resides in the Bahamas and successfully defeated the United States' efforts to extradite him to face charges with Bourke.

During trial, the prosecution presented testimony from two cooperating co-conspirators who claimed that Bourke learned of Kozeny's payments to Azeri officials shortly after his first investment in Oily Rock, but continued to make investments despite his knowledge of the bribes. The government argued to the jury that given the widespread corruption in Azerbaijan, as well as the fact that Bourke's business partners (the cooperating co-conspirators who testified for the prosecution) knew of the bribes, Bourke at the very least knew that it was highly likely that bribes were being made but "consciously avoided" learning about the corrupt payments.

Bourke's defense team contended that Bourke never knew of any bribes to Azeri officials and, having lost millions in the failed investment, was actually a victim of Kozeny's scheme to defraud Oily Rock's investors. Bourke's lawyers presented several witnesses who directly contradicted the testimony of the cooperating co-conspirators, including a witness who testified that, while Bourke knew that Azeri government officials were investors, lawyers had advised Bourke that the officials' participation in the investment was legal. Finally, Bourke's lawyers argued that he was actually a whistleblower who

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## **Jury Convicts Frederic Bourke . . .**

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brought evidence of Kozeny's fraud to law enforcement authorities upon learning that Kozeny had stolen his money.

Ultimately, the jury rejected Bourke's defense that he was an unwitting investor and innocent victim of Kozeny's corrupt scheme. Several jurors interviewed following the verdict indicated that, while sympathetic to Bourke, they believed that there were too many red flags for Bourke to have been totally ignorant of the scheme to bribe officials.

At sentencing, Bourke faces up to 10 years in federal prison, but Judge Shira Scheindlin indicated that she would not impose the full sentence.

### **Implications of Frederic Bourke's Conviction**

Frederic Bourke's conviction provides a high-profile illustration of the wide scope of criminal liability under the FCPA. The government secured a conviction of Bourke without evidence that Bourke had himself paid any bribes. Rather, the government convicted Bourke based on Bourke's knowledge that Kozeny was making payments to influence Azeri officials, or at the very least, that Bourke was aware of a high probability that Kozeny was making unlawful bribes and willfully avoided learning of the bribes by "sticking his head in the sand."

Bourke's case is part of a substantial upsurge in Department of Justice and Securities and Exchange Commission investigations of violations of the FCPA in recent years, but one of only a handful of such cases resolved by trial, as opposed to a plea or deferred prosecution agreement. The Bourke guilty verdict signifies that the FCPA will continue

to serve as a vital weapon in the government's arsenal to combat corrupt business practices and makes evident that one can be criminally liable for a bribe made or facilitated by a business partner or agent. Further, the government has now demonstrated that it can successfully prosecute based on the theory that a defendant put his proverbial head in the sand with regard to corrupt payments. Finally, while the government has historically focused on prosecuting corporations under the FCPA, the Bourke case represents part of a recent trend in charging individuals with FCPA violations, with prison sentences serving as significant deterrence to others who might contemplate making corrupt payments to advance their business interests. The Bourke conviction is likely to further fuel this trend. Without question, the Bourke story underscores that individuals and corporations alike should engage legal counsel with criminal defense expertise to assist them in the creation of effective corporate compliance programs and ensure that they do not run afoul of the United States' rigorous efforts to combat corruption in international business dealings.

For more information or if you have questions about Frederic Bourke's conviction or other recent developments regarding the Foreign Corrupt Practices Act, please contact Leo Cunningham (lcunningham@wsgr.com), Robert Gold (rgold@wsgr.com), Elizabeth Peterson (epeterson@wsgr.com), Lisa Prager (lprager@wsgr.com), or Michael Sommer (msommer@wsgr.com) in Wilson Sonsini Goodrich & Rosati's white collar criminal defense practice.



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